

Toward a Kashmir Endgame? How India and Pakistan Could Negotiate a Lasting Solution

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SPECIAL REPORT

NO. 474 | AUGUST 2020

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Toward a Kashmir Endgame? How India and Pakistan Could Negotiate a Lasting Solution

By Happymon Jacob



Motorcyclists navigate past barbed-wire placed by Indian security forces in the Kashmiri city of Srinagar on August 10, 2019. (Photo by Atul Loke/New York Times)

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Summary

- Kashmir has been a cauldron of discontent since August 2019, when the Indian government altered the special constitutional status of the state of Jammu and Kashmir and split it into two “union territories” under direct federal administration.
- For now, the Indian government seems to have closed off options for a negotiated settlement of Kashmir with Pakistan as well as with separatist parties in Kashmir. New Delhi's strategy is to tighten its control of Kashmir while creating space for more pro-India politics. But this approach has intensified disaffection in Kashmir while opening the door for increased Pakistani interference.
- Pakistan has responded by stitching together a strategy designed to cast doubt on the diplomatic basis of the current bilateral cease-fire and fuel violence within Kashmir while raising tensions on the border.
- These mutually exclusive and highly militarized strategies have the potential to dangerously re-escalate tensions between India and Pakistan.
- Although bilateral attempts at conflict resolution in Kashmir seem unlikely in the near future, both sides may come to see the advantages of talking. When the time is ripe, the two sides should revisit the “Kashmir formula” that was negotiated and nearly finalized in 2004–07 through backchannels.



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ABOUT THE REPORT

This report examines the insurgency and militancy in Kashmir and the India-Pakistan conflict over Kashmir in the wake of the major constitutional changes carried out by India in August 2019. This study is based on discussions and interviews with senior retired and serving Indian and Pakistani officials and on insights gained from the author's participation in closed-door track 2 meetings between India and Pakistan.

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Protesters gather along a street in Srinagar, the summer capital of India-administered Kashmir, on September 13, 2019.
(Photo by Atul Loke/New York Times)

Introduction

Kashmir has once again emerged as a major flashpoint between South Asia's nuclear-armed rivals, India and Pakistan.¹ In early August 2019, the India government decided to carry out a series of major constitutional changes, splitting the Indian-administered state of Jammu and Kashmir into two union territories under direct federal administration and altering the special constitutional status that had been accorded to the state under Article 370 of the Indian Constitution.² As part of this drastic step, the Bharatiya Janata Party (BJP)-led government of Prime Minister Narendra Modi ordered the deployment of a massive security presence, a shutdown of the Internet and other communications services, and the detention of mainstream and dissident political, civil society, and other leaders in the Kashmir Valley.

The core conflict in Kashmir is twofold: a territorial dispute between India and Pakistan over Kashmir, and an internal challenge—including a long-standing nonviolent separatist political movement as well as a militant insurgency—in Kashmir against the Indian state.³ This conflict has clearly identifiable historical roots, beginning with the merger of the state in 1947 with the Indian Union.⁴ Disputes over Kashmir's status have been a central driver of conflict between India and Pakistan in the decades since, with levels of violence inside Kashmir mirroring fluctuations in the bilateral relationship.

With its August move, the Indian government seems to have closed, at least for now, all doors for a negotiated settlement of Kashmir with Pakistan and also severely limited the popular appeal within Kashmir of political groups pressing for closer ties with India. Senior officials of

the Indian government have gone on record to declare that there will be no bilateral talks on Kashmir except on the part presently under Pakistani control.⁵ This means that while India had previously insisted this dispute was a bilateral issue, it now considers Kashmir's status to be a purely domestic issue, something it has no need to discuss with Pakistan.

However, the Indian government's insistence on Kashmir being a purely domestic issue is a fiction maintained only by a large security presence, and it will be sorely tested by the disaffection that has intensified among separatists and the Kashmiris in general since August 2019. It will also be tested by Pakistan, which is rapidly trying to recover from being outmaneuvered by India. Pakistan will help terrorists infiltrate Kashmir, and Pakistani regular military forces may well find themselves in clashes with Indian troops. New Delhi will increasingly find it hard to manage its narrative about constitutional and political changes ushering in peace to Kashmir. Most indicators of violence in Kashmir have been on the rise since the August 2019 decision.

This untenable situation will motivate the two sides to come to the negotiating table, sooner or later. If and when those talks take place, the negotiators should reacquaint themselves with a formula devised in earlier bilateral talks on Kashmir that could well work in future talks.

This report begins with a description of the situation on the ground in Kashmir following the change in its status, presenting data on a surge in cease-fire violations (CFVs), an increase in infiltrations of terrorists into Kashmir from the Pakistani side, and a continuation of terror attacks inside Kashmir. The report then explores the strategies India and Pakistan have adopted toward Kashmir since August 2019 and argues that those strategies could destabilize Kashmir further and take the two sides to the brink of another escalation. The final sections of the report revisit a potential road map for resolving the Kashmir conflict: namely, the solution that was arrived at in 2004–07 by backchannel interlocutors appointed by the Indian prime minister and Pakistani president. The four-point formula proposed by President Pervez Musharraf and fine-tuned during the subsequent backchannel negotiations is, as the report explains, the best available solution to the Kashmir conflict. As and when India and Pakistan return to the negotiating table on Kashmir, that solution—adjusted in light of recent changes in Kashmir—is likely to have supporters on both sides of the divide in Kashmir, as well as in both New Delhi and Islamabad.

The Situation in Kashmir Following the Change in Status

Indian officials have deployed a heavy security presence in Kashmir since the change in status, and Indian forces have maintained a state of high alert on the Line of Control (LoC) dividing Indian- and Pakistan-administered Kashmir (see map on page 5). Widespread controls on the Internet and on telephone services have frustrated efforts to coordinate public protests against the move. This communications blackout and the presence of troops on the streets in Kashmir were justified as necessary measures to reduce the threat of retaliatory terror attacks and associated casualties. With the spread of coronavirus and the subsequent imposition of a pandemic lockdown in 2020, Kashmiris have had to contend with a “double lockdown.”⁶



MAP 1. KASHMIR SINCE THE CHANGE IN STATUS

Adapted from artwork by Rainer Lesniewski/Shutterstock. The boundaries shown on this map are approximate and do not imply official endorsement or acceptance on the part of the author or the United States Institute of Peace.

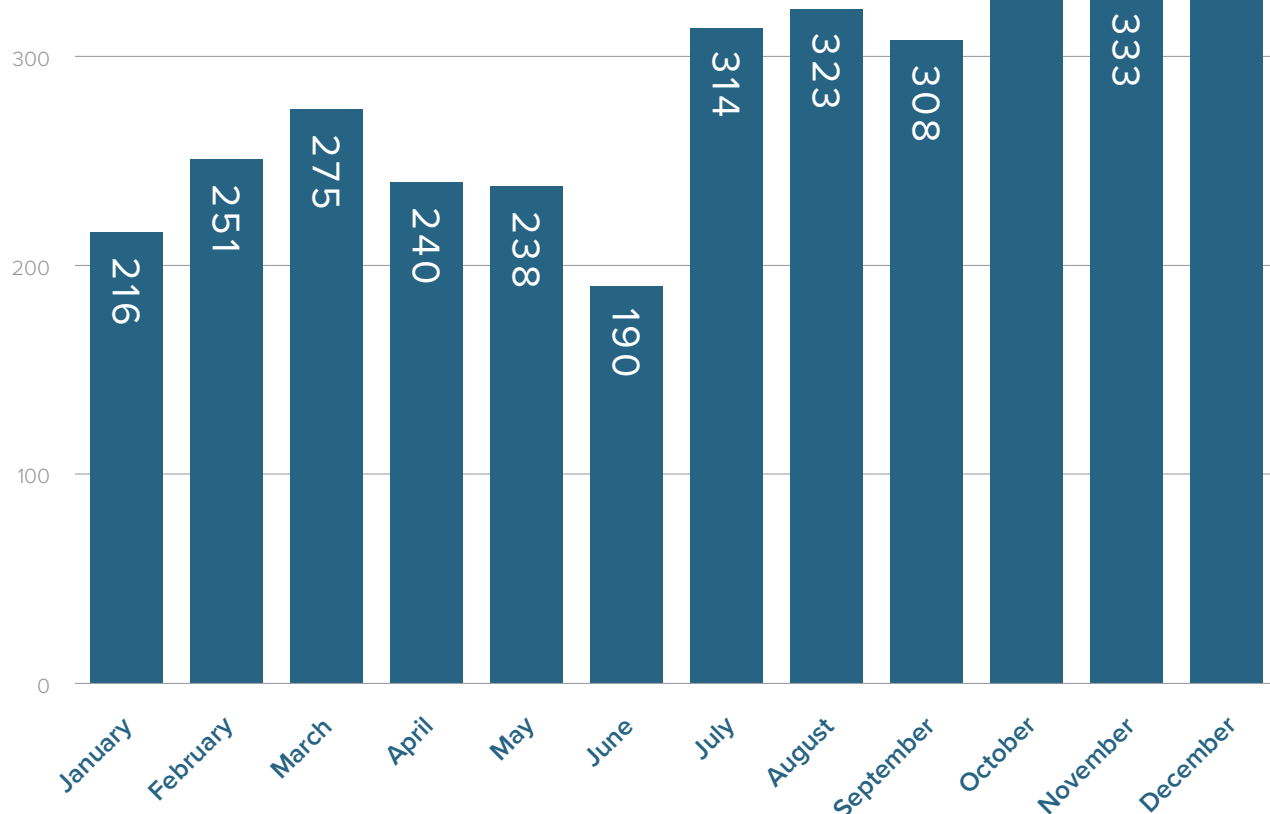
These controls have had mixed results in terms of their impact on levels of violence. According to statistics released in February 2020 by India's Ministry of Defence, CFVs between Indian and Pakistani forces posted along the LoC spiked significantly after August 2019.⁷ (Table 1 shows CFVs for all of 2019.) India and Pakistan had agreed to a cease-fire in late 2003, which held more or less until 2011; CFVs—most involving cross-border shelling—have been on the rise ever since due to a range of factors, but the recent escalation has been pronounced, and cross-border CFVs in the first four months of 2020 were the highest since 2003.⁸ Throughout the first half of 2020, the spike has continued.⁹

India cites increased infiltration attempts from terror camps across the border as the reason for the spike in CFVs, while Pakistan accuses India of committing CFVs to divert the world's attention from its alleged human rights violations against Kashmiris and Muslims throughout India.

Another indication of rising tensions since 2019 is a surge in the number of attempts by terrorists to infiltrate into Indian-controlled Kashmir from across the border with Pakistan. According to figures provided by India officials, despite the heavy security presence inside Kashmir and on the LoC, the number of infiltration attempts rose from fifty-three in the three months before early

FIGURE 1.

Cease-fire Violations in 2019



Source: Indian Ministry of Defence, "Ceasefire Violations by Pakistan," Starred Question No. 76 Rajya Sabha, February 10, 2020.

August 2019 to eighty-four in the three months afterward, with 157 terrorists killed in encounters with security forces in Kashmir between early August and the end of October.¹⁰

Terror incidents, however, did decrease, albeit marginally, during the same periods, falling from 106 in the three months before early August to 88 in the following three months, presumably due to the heavy security presence.¹¹

Another indicator—and perhaps the most telling one—that the heavy security presence has helped to stifle a violent response to the August 2019 decision is a decline in the number of Kashmiri youth joining militant groups, despite the level of anger that the decision provoked among young people. The total for 2018 was 218 but only 139 for 2019, a number that was almost back down to the total for 2017 (126).¹² It seems clear that the major deployment of Indian security forces has interrupted communication and coordination among militant organizations and between them and potential recruits.

New Delhi's Strategy in Kashmir

The Indian government's August decision on Kashmir was unpopular within Kashmir but enthusiastically welcomed in the rest of India. Even members of the opposition Congress Party supported the revision of Article 370, if not the bifurcation of the state into two union territories: Jammu and Kashmir in the west and Ladakh in the east.¹³ The Rajya Sabha (the Upper House of the Indian Parliament), where the government does not have a majority, nonetheless supported the passage of the Jammu and Kashmir Reorganization Act.¹⁴ The government defended its actions by describing Article 370 as a threefold problem: a stumbling block in bringing Kashmir closer to the rest of India; a source of extremism and separatism in the Kashmir Valley; and an avenue for Pakistan to gain a foothold in the valley. Many of those who disagreed with the government's decision did so because they disagreed with the manner in which it was implemented (i.e., the government failed to consult Kashmiri elected representatives), not because of the substance of the move.

Aside from provoking such minor complaints, making the decision was easy for the government. Implementing it has been more challenging. And dealing with its long-term aftermath will be more difficult still. The question presents itself: does New Delhi have a carefully conceived, long-term policy to stabilize Kashmir and bring it into the mainstream of India's polity? The government has yet to provide an answer, indulging in high-flown rhetoric and grandstanding but not revealing any blueprint for the future of Kashmir. Even so, five elements of the government's likely long-term strategy are discernible.

One major component is to look beyond the moderate separatists in the valley as potential interlocutors. Traditionally, New Delhi used moderate pro-independence parties such as the Hurriyat Conference to reach out to the disaffected Kashmiri populace. Since August 2019, New Delhi has stopped considering the moderate separatists as stabilizing forces, and Kashmiris now look suspiciously at moderate politics of any kind.¹⁵ In short, the moderate separatists have been sidelined. This situation, however, means that New Delhi's ability to reach out to the Kashmiris will be severely limited, making peacebuilding harder than ever.¹⁶ Furthermore, in an attempt to reassert their relevance, the moderate separatists may decide to abandon their old agenda and take more hawkish political positions. New Delhi may have calculated that sidelining the moderate dissidents would limit Pakistan's influence in Kashmir, but the result may be to inspire further leaderless and uncoordinated protests and forced lockdowns in the valley and thereby underscore the fact that without interlocutors who are considered legitimate by the local population, New Delhi's ability to bridge the political divide separating it from Kashmiris is limited.

A second element of New Delhi's strategy is to create space in the valley for more pro-India politics—that is, for political activity that embraces the notion of Kashmir as an integral part of India. A new political party named the Apni Party—which is led by Altaf Bukhari, a former member of the Peoples Democratic Party (PDP) who served as a minister in the BJP-PDP coalition government—has already emerged as an alternative political formation in the valley. Bukhari and his associates have been actively promoted by the BJP government in New Delhi to paint a picture of “normal” political life continuing in the valley—to provide a Potemkin representation of the peaceful valley to outsiders.¹⁷ Conflict management involves managing narratives, and by trying to create space for pro-India

politics in the valley, New Delhi aims to promote a narrative in which the situation in Kashmir is viewed as normal, or limping back to normal, and strengthen its political hold within Kashmir.

New politics also mean new bargains—and new political careers. With the political mainstream in detention, discredited, or sidelined, the second-rung Kashmir political leadership might well be enticed with the promise of fresh and bright political careers. These politicians are unlikely to want to be trammled by the political demands and claims of the past. Instead, they are likely to enter into negotiations with New Delhi on a range of new issues, which might rule out the reinstatement of Kashmir's special status via Article 370. For instance, while the reinstatement of Article 370 is not on its agenda, the newly launched Apni Party did demand the extension of Article 371 of the constitution to the union territory of Jammu and Kashmir. At the same time, the Apni Party sought to demonstrate its independence from New Delhi by calling for the protection of jobs and domicile rights for locals.¹⁸ In April 2020, however, New Delhi showed it was in no mood to kowtow to Kashmiri sensitivities and instead introduced a law that gives domicile rights to people who were not born in Kashmir. The new law allows “anyone who has resided in Jammu and Kashmir for fifteen years or has studied there for seven years, and appeared in the Class 10 or Class 12 examination” to claim domicile status and apply for specific categories of government jobs. Local political parties, including the Apni Party, criticized the new move.¹⁹

What is most likely to dominate any list of demands from local politicians is the return of statehood for Kashmir.²⁰ The August decision by the central government withdrew the special constitutional status given to the state and downgraded the state into two union territories, which is the first time in independent India's history such an action has been taken. While the withdrawal of Kashmir's special status is set to remain in force, unless the judiciary overturns it, the revocation of statehood may be negotiable. In fact, on August 8, just three days after the momentous Kashmir decision, Prime Minister Modi suggested that Jammu and Kashmir's status as a union territory was a “temporary” situation.²¹ At some point in the future, statehood may be restored, even though the Ladakh area will continue to remain a union territory (a status that Ladakh's Buddhist majority have long sought, although its sizable Muslim minority oppose). By holding out the prospect of restoring Kashmir's statehood, New Delhi has created the possibility of a new brand of politics in Kashmir, one centered around the issue of the return of statehood. This issue alone has the potential to create new political formations in the valley, pitchfork new political leaders into the political fray, and generate new political bargains with New Delhi.

These new formations may well take shape, but whether they endure beyond a few years will depend on the calculations of the mainstream political parties and the dissident camp. Even though mainstream politicians are not held in high esteem by aggrieved Kashmiris, they still have the capability to frustrate New Delhi's desire to manage the political narrative in the valley. The valley's dissidents, who perhaps enjoy more moral legitimacy than the mainstream parties, are deeply opposed to New Delhi's Kashmir policies.

A third component of New Delhi's strategy is to strengthen its hold over the affairs of Kashmir. Federal control has already been significantly bolstered by bringing the administration of the newly created union territory under a lieutenant governor directly appointed by the Union Home Ministry.²² The intensified troop presence since August 2019 has also tightened the central government's grip on Kashmir. By most accounts, the total number of security personnel in Kashmir,



Residents outside shuttered shops in the Kashmiri city of Srinagar on August 11, 2019. The Indian government cut off internet access in the Kashmir region in August, bringing everyday transactions to a standstill. (Photo by Atul Loke/New York Times)

including police, is now around 450,000.²³ The new administrative changes will help New Delhi cut through the din of local politics and the complexities of local bureaucracy as it seeks to implement its programs in the valley.

New Delhi's tight control seems unlikely to be relaxed soon. The process of lifting restrictions on the Internet is proceeding only gradually.²⁴ Although the US State Department and the European Union have raised concerns over continued blocking of the Internet, on May 11, 2020, the Supreme Court of India rejected petitions demanding restoration of 4G Internet services in Kashmir.²⁵ The court also issued an order to constitute a "special committee" of top-ranking officials from the new Kashmir administration to decide if present conditions in Kashmir require the restoration of the Internet.²⁶

Many Kashmiri politicians remain in detention. In April 2020, two of the three former chief ministers under detention were released by the government, but hundreds of state political leaders continue to be charged under Jammu and Kashmir's draconian Public Safety Act, which allows the state to hold a person without producing them in court.

A fourth element of the Indian strategy is to reinvigorate efforts to mainstream Kashmir into the rest of India through developmental activities. This process may involve a return of the Kashmiri Pandits, the Hindu minority community who left the area in the late 1980s and early 1990s. Plans

have been drawn up to relocate the Kashmiri Pandits from their makeshift camps in Jammu to specially created enclaves in the Kashmir Valley.²⁷ The prospect of forced demographic changes worry Kashmiris, who have been accustomed to living in the only Muslim-majority state in India. Fears of a flood of non-Muslims into Kashmir may well be unwarranted, however. As noted above, the law introduced in April 2020 states that anyone born outside the union territory qualifies as a domicile resident only if he or she has been a resident within the area for fifteen years. Moreover, notwithstanding New Delhi's promises of security, even the Kashmiri Pandits have been deterred by militant violence from returning to Kashmir.

The fifth component of India's strategy is to deflect Pakistan's criticism of India's recent actions in Kashmir by pointing fingers at the unresolved status of Pakistan-administered Kashmir. New Delhi argues that the Pakistani part of Kashmir belongs to India, which will incorporate the territory into the rest of India at some point in the future.²⁸ One example of this approach is provided by India's Meteorological Department, which now refers to its meteorological subdivision of Jammu and Kashmir as "Jammu & Kashmir, Ladakh, Gilgit-Baltistan and Muzaffarabad [areas within Pakistan-controlled Kashmir]," a term that is repeated in every daily weather forecast.²⁹

In short, whereas New Delhi's traditional strategy was to arrive at a negotiated settlement of the Kashmir dispute with Pakistan and the Kashmiri leadership, its new strategy emphasizes the domestic political management of Kashmir. The question, however, remains whether New Delhi is equipped to create a new narrative and politics in Kashmir. Creating a new political narrative in a profoundly conflict-ridden space such as Kashmir would require an empathetic and conflict-sensitive approach, something that is missing in New Delhi at the moment.

Pakistan's Strategy in Kashmir

In the wake of New Delhi's decision vis-à-vis Kashmir, Pakistan's Kashmir policy seemed to be in deep disarray. In one strike, New Delhi appeared to have unilaterally changed the rules of the game in Kashmir, leaving Pakistan with little choice but to accept or resist the *fait accompli*.³⁰ Accepting it would have domestic and bilateral reputational costs, but resisting India's Kashmir move is easier said than done and has associated material and other costs in the longer run. Pakistan, therefore, found itself facing a major dilemma over Kashmir. However, over the past several months, Pakistan has stitched together what appears to be a grand strategy to overcome that dilemma.

The first element in Pakistan's strategy has been to "Kashmir-shame" India. In the immediate aftermath of the August decision by New Delhi, Pakistan launched an international diplomatic campaign to condemn and discredit the Indian action in Kashmir. Pakistan highlighted the human rights impact of India's new Kashmir policy, as well as its bilateral and regional implications. Pakistan's prime minister, Imran Khan, convened a meeting of the country's National Security Committee, called India's move "unilateral and illegal," and suspended bilateral trade with India.³¹ Pakistan also ordered India's ambassador to Pakistan to leave the country and pulled back its own ambassador-designate from the New Delhi posting.³² Khan also raised the issue on the floor of the UN Security Council.³³

The second piece in Pakistan's grand strategy, a close corollary of the first, has been to enlist the support of the international community in its campaign against India's Kashmir policy. The



Prime Minister Imran Khan of Pakistan during a bilateral meeting with US President Donald Trump on the sidelines of the UN General Assembly session in New York, on September 23, 2019. (Photo by Doug Mills/New York Times)

Muslim 5 Summit—a newly curated forum hosted by Malaysia and featuring Iran, Qatar, and Turkey, as well as Pakistan—has been very vocal on the Kashmir question.³⁴ Pakistan's close ally, China, attempted to raise the issue at the UN Security Council, but its efforts were rejected by the other permanent members.³⁵ Pakistan reached out to the United States to take up the Kashmir issue. The official US position—as articulated by Alice Wells, acting assistant secretary at the US State Department—was far more nuanced than Pakistan would have preferred, noting US concerns over “widespread detentions, including those of politicians and business leaders, and the restrictions on the residents of Jammu and Kashmir” and calling for the “resumption of political engagement with local leaders and the scheduling of the promised elections at the earliest opportunity.”³⁶

Many members of the international community have listened to Pakistan's complaints and have shared—to varying degrees—their concerns about New Delhi's Kashmir policy.³⁷ All of Pakistan's forceful appeals, however, have so far achieved precious little. The Gulf States, many of whom are close allies of Pakistan, have largely abandoned Pakistan's Kashmir cause, and India seems to have succeeded in pushing Kashmir off the European Union's agenda, at least for now. In addition, the international community has become preoccupied with the COVID-19 pandemic.

Despite Pakistan's support for militancy in Kashmir, the Indian reaction has so far been muted, in large part, it seems, because recent terror attacks in Kashmir have been relatively small in scale and have not enjoyed high visibility.

As a third part of its strategy, Pakistan has adopted its own version of revisionism on the Kashmir issue. Retired Pakistani officials close to the establishment have argued that in the wake of India's Kashmir decision, the Simla Agreement of 1972—which forms the basis of bilateral relations, including the management of the LoC in Kashmir—is no longer valid.³⁸ The officials contend that the Indian decision vis-à-vis Kashmir goes against the spirit of the Simla

Agreement, in particular the agreement's provision that the two countries are to settle their differences by peaceful means through bilateral negotiations. More pertinently still, the agreement declares that “pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation and both shall prevent the organization, assistance or encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations.”³⁹

Although official Pakistani policy currently does not call into question the validity of the Simla Agreement, the fact that senior retired Pakistani officials with traction in the Pakistani establishment have raised the issue in several track 2 conferences suggests that Rawalpindi (where Pakistan's military is headquartered) is seriously rethinking its stance.⁴⁰ If this is indeed the case, the implications could be important. The Simla Agreement formalized several territorial changes between 1949 and 1971, and these could become null and void. Furthermore, the current cease-fire agreement between India and Pakistan (which was declared in 2003) is essentially a reiteration of the cease-fire agreement declared at the end of the 1971 war, and thus scrapping the Simla Agreement could mean discarding the basis for the existing cease-fire. In short, the entire logic of India-Pakistan negotiations since 1972 may cease to exist if Pakistan decides to undermine the Simla Agreement.

The fourth piece of the Pakistani grand strategy may turn out to be the most crucial. In off-the-record conversations with this author, several retired Pakistani military officers have suggested, albeit without elaborating, that Rawalpindi might help create a situation in Kashmir that would force New Delhi to the negotiating table with Pakistan on the Kashmir question.⁴¹ In other words, Pakistan might provide material, financial, logistical, and diplomatic support for those fighting the Indian forces in Kashmir. Given the negative light in which the international community views the current developments in Kashmir, Pakistan would be sure to portray militant violence in Kashmir as an aftereffect of India's Kashmir policy; indeed Pakistan is already doing so. Moreover, if Pakistan casts doubt on the validity of the LoC as codified in the Simla Agreement, it would be easier for Pakistan to justify infiltrations of militants from the Pakistani side. Any resulting escalation of CFVs and other tensions would only increase the pressure on New Delhi to negotiate.

But would creating trouble in Kashmir force the Modi government to the negotiating table? Terror attacks in Kashmir, it should be noted, may not reduce the BJP's political standing in the rest of India. To the contrary, a surge in terrorism in the valley might strengthen the BJP government's claims to be defending national security by bringing Kashmir under tighter control and boost the government's political support in the country as a whole, at least until terror attacks are either carried out in other parts of India or their impact is felt in regions other than Kashmir.⁴²

Despite this potential flaw in the logic of Pakistan's strategy, increasing evidence indicates that Pakistan has indeed been gradually upping the ante in Kashmir in terms of fueling violence and

heightening tensions. CFVs, including the use of heavy weapons, have been on the rise since late 2019.⁴³ As noted earlier in this report, infiltrations have also been increasing, and Indian counterterrorist operations to reduce the threat can be costly; for instance, in one such operation in early May, an Indian army colonel, a major, and two soldiers were killed.⁴⁴ A newly minted terrorist group in Kashmir, The Resistance Front (TRF), which Indian officials believe is controlled by the Pakistan-based jihadi group Lashkar-e-Taiba, has been organizing major terror attacks.⁴⁵ Indian officials suspect that the TRF has been created to give terror in Kashmir an indigenous face, thereby reducing international pressure, especially from the antiterror financing watchdog Financial Action Task Force, on Pakistan.⁴⁶ No one doubts that an indigenous militancy exists in Kashmir, but no one also doubts that it is actively aided and abetted by the Pakistani side.

Despite Pakistan's support for militancy in Kashmir, the Indian reaction has so far been muted, in large part, it seems, because recent terror attacks in Kashmir have been relatively small in scale and have not enjoyed high visibility. However, were the scale and visibility of attacks to significantly increase, New Delhi might consider a Balakot-like military response, especially if it might help the government politically in the rest of India.⁴⁷ The lesson learned by Indian decision makers from the Balakot episode in early 2019 seems to be that India, thanks to its superiority in conventional weaponry, can carry out limited military strikes against Pakistan, even across the international border, without provoking a tactical nuclear response from Pakistan. Moreover, the military standoff between India and China in June 2020 and the casualties suffered by India in the Galwan Valley dispute, would make it difficult for the Modi government not to respond to any provocation in Kashmir.⁴⁸ At the same time, however, the India-China military standoff and the perception in Pakistan that "China has put India in its place" may give Pakistan the confidence to increase the heat on India in Kashmir.

A Template for Talking

Since August 2019, New Delhi has, time and again, argued that it will not engage in a conversation with Pakistan on the Kashmir question, except to discuss the status of Pakistan-administered Kashmir. Pakistan, for its part, has insisted that no talks with India can be held until India rolls back the Kashmir decision.⁴⁹ If Pakistan were to begin talks with India, Pakistan would be indicating that it has accepted the revised status quo in Kashmir. Accepting such a fait accompli as an implicit precondition for talks is clearly unacceptable for Islamabad. Yet, although this continues to be the official Pakistani position, there appear to be some nuanced messaging from the Pakistani side regarding potential engagement with India.

In track 2 forums, while former Pakistan army officers take the line that no talks can be conducted unless India rolls back its August 2019 decision, some former Pakistani diplomats seem to indicate that bilateral engagement could recommence as and when there is calm and normalcy in Kashmir. That may seem a remote possibility at present, but perhaps New Delhi will at some point abandon its reluctance to acknowledge Kashmiri political concerns. New Delhi has so far taken an inflexible stand on talks with Pakistan but it may come to see dialogue with Pakistan as a means of securing recognition, albeit implicit, of the new status quo. Having said that, it is plausible that if there is a change of government in New Delhi, a non-BJP government may be more amenable



Security forces on patrol in Srinagar, in Jammu and Kashmir, on August 10, 2019. Indian officials have deployed a heavy security presence in Kashmir since the change in status. (Photo by Atul Loke/New York Times)

to addressing the political concerns of the Kashmiris and reducing violence there. Moreover, it is important to keep in mind that the two sides have often come to the negotiating table after sustained periods of acrimony and violence. For instance, the 2003 cease-fire agreement and the bilateral discussion on Kashmir came in the wake of a particularly violent phase in the history of their relationship: the three-month Kargil conflict between Indian and Pakistani military forces took place in 1999; a terror attack on the Indian parliament in December 2001 led to a nine-month-long military standoff between the two sides; and between late 2002 and November 2003, several terror attacks were carried out in Jammu and Kashmir. And yet, in 2004, the two sides were able to launch a backchannel conversation and move ahead with a successful dialogue process.

Assuming that the two sides do eventually find sufficient reason to sit down at the negotiating table and discuss Kashmir, what might be the format of such a conversation? One readily available model for the format—and for much of the content—of a dialogue is the template used during those backchannel negotiations conducted between 2004 and 2007.⁵⁰

Although these talks have yet to be officially acknowledged by either India or Pakistan, details of the negotiations and of the proposed solution to the Kashmir standoff they generated have subsequently emerged.⁵¹ The BJP government of Atal Bihari Vajpayee initiated the peace talks

with Pakistan on the Kashmir question, a policy that was continued by the successor government led by Manmohan Singh. Singh appointed Satinder Lambah to be the Indian interlocutor, while President Pervez Musharraf of Pakistan chose Tariq Aziz.⁵² Lambah and Aziz, each of whom reported directly to his head of government, conducted secret parleys in third-country capitals from late 2004 until early 2007, looking for a formula to resolve the Kashmir dispute.⁵³

By most accounts, the basis of the negotiations was a four-point formula proposed by Musharraf.⁵⁴ His formula consisted of self-governance for the entire former princely state of Jammu and Kashmir; demilitarization of the state; removal of “irrelevant” borders, implying free movement of people and trade between India, Pakistan, and the two sides of Jammu and Kashmir; and joint management of Kashmir, with India, Pakistan, and the two Kashmiris forming a group to manage common interests and common issues such as trade, tourism, and river waters.⁵⁵ By mid-2007, the two sides had discussed each of these points in minute detail and inched toward an agreement. Differences of opinion remained on some issues, but India and Pakistan were close to signing a deal.

In April 2010, former Pakistani foreign minister Khurshid Mahmud Kasuri suggested that the “near-deal” on Kashmir involved a formula for peace characterized by “loose autonomy that stopped short of the azadi (freedom) and self-governance aspirations . . . to be introduced on both sides of the disputed frontier”; the formula was understood to provide a status “between complete independence and autonomy.”⁵⁶ The negotiators had to contend with challenging questions regarding each country’s claims of sovereignty to the erstwhile princely state of Jammu and Kashmir and with practical issues such as how joint institutions could be established in it. Conversations with former Indian and Pakistani officials and politicians who were in office while the backchannel dialogue was under way suggest that the Pakistani side was far more optimistic than the Indian side. The Indian side was more cautious; the Indian officials were also concerned that Musharraf might not be able to implement the solution, once it was arrived at, because he lacked broad-based political support at home.⁵⁷

The two sides made considerable progress over the course of four years. After the interlocutors discussed the conflict and the possibility of resolving it using the backchannel, they reported back to their respective political leaderships, who offered suggestions on how to keep the talks progressing. On the Indian side, the details of the talks were known only to the prime minister, the national security advisor, and Lambah; on the Pakistani side, a larger, informal group was regularly consulted by Aziz.⁵⁸

One distinctive feature of the negotiating process was that various Kashmiri political leaders were regularly consulted by Indian and Pakistani officials (the Pakistani side seems to have been especially active in this regard) while the backchannel interlocutors were finalizing the terms of a deal.⁵⁹ Most of the mainstream and separatist politicians in Kashmir were not only consulted by the two sides but were also broadly in agreement with the underlying principles of the Kashmir formula, with the notable exception of Ali Shah Geelani, a pro-Pakistan hardliner.⁶⁰ Previously, bilateral discussions on Kashmir almost never included the Kashmiris. Bringing them into the negotiating process in 2004–07 meant that all stakeholders—the Indian government, the Pakistani foreign office and army, and the Kashmiri leaders—were on board.

According to some officials who were privy to the backchannel negotiations, the two sides had exchanged unsigned “non-papers” listing each side’s positions on various topics by late

2006, and had made preparations to sign the Kashmir deal in mid-2007.⁶¹ In June 2007, some former Pakistani officials recall, Prime Minister Singh was due to visit Pakistan, where he and Musharraf were expected to sign the peace deal.⁶²

Even though the backchannel deal had raised great hopes within the Indian and Pakistani establishments, optimism began to erode in early 2007 as a wave of agitation against Musharraf organized by Pakistani lawyers gained momentum and started to erode his legitimacy at home.⁶³ From that point on, the Indian side decided to approach the Kashmir negotiations more cautiously. Pakistani officials say they asked the Indian government to postpone the finalization of the deal until the political climate in Pakistan was stable.⁶⁴ By mid-2007, the Musharraf government had lost much of its authority and New Delhi realized that the formula would not get finalized. The Pakistan People's Party, which succeeded Musharraf after he left office in 2008, claimed there was no paper trail of the discussion.⁶⁵ No one in Pakistan, including the army, tried to revive the deal. The Mumbai terror attacks in November 2008 ensured that it was put on the back burner.

Conclusion: Could the Kashmir Formula Work in the Future?

Might the four-point formula negotiated in 2004–07 form the basis for future talks on Kashmir between India and Pakistan; might it even be the basis for a new and enduring deal on Kashmir? Or have the political changes carried out by New Delhi in Kashmir since the summer of 2019 made the formula redundant? One way to answer that question is to look in turn at each of the four points to determine what is salvageable and what is not.

The first of the quartet is granting self-governance to both the India-administered and the Pakistan-administered sides of the erstwhile princely state of Jammu and Kashmir.⁶⁶ India's August decision and Pakistan's earlier decision to carry out constitutional changes in the part of Kashmir controlled by Pakistan have made it almost impossible to grant self-governance to either part of Kashmir. On the Indian side, now that Jammu and Kashmir has become a federally administered territory and its special status taken away, self-governance is perhaps out of the question. Were New Delhi to restore statehood to Jammu and Kashmir, only part of the challenge in this regard would be resolved, because special status would also need to be restored. Put another way, self-governance requires both regional territorial integrity, as was agreed in the Manmohan-Musharraf deal, and special status, both of which the August decision has undone.

Demilitarization of Kashmir, the second main point of the 2004–07 deal, is possible if the two states decide to demilitarize and can agree on how to implement that decision. Demilitarization will not be easy to achieve, not least because it will require stability in Kashmir at several levels. Pakistan would have to clamp down on terror groups in order to stop infiltration into Kashmir. New Delhi would have to persuade Kashmiris that it is attentive to their interests, or at least create sufficient acceptance among Kashmiris of the Indian presence that they would not be prepared to take up arms against the Indian state. But if Pakistan and New Delhi could achieve those goals, then the first steps in the process of demilitarization could take place, with pilot programs in a number of territorial pockets. If

Although militancy in Kashmir is unlikely to survive for long without Pakistani support, widespread disaffection in Kashmir could play the role of a spoiler for long enough to wreck plans for demilitarization.

those prove successful, demilitarization could be extended to other parts of Kashmir. A wild card in this context would be the future trajectory of homegrown insurgency in Kashmir. Given that the local footprint of the insurgency is much deeper than in previous decades, even if Pakistan were to control infiltration across the LoC, Kashmir might still suffer from attacks launched by indigenous militants. Although militancy in

Kashmir is unlikely to survive for long without Pakistani support, widespread disaffection in Kashmir could play the role of a spoiler for long enough to wreck plans for demilitarization.

The third element of the formula is making borders irrelevant in Kashmir, which means allowing the free movement of people and trade between India, Pakistan, and the two Kashmirs. During the period when the backchannel was active, India and Pakistan decided to initiate several Kashmir-specific confidence-building measures.⁶⁷ In February 2005, the two sides formally announced that a bus service would run between Srinagar and Muzaffarabad; the service began in April 2005. A second service, from Poonch to Rawalakote, started just over a year later, in June 2006. Only those with relatives on the other side of the LoC were allowed to use the services. This dialogue process eventually led to the beginning, in October 2008, of trade across the LoC; duty-free barter trade for twenty-one items produced on either side of the LoC was allowed.

The cross-LoC trade and travel were mostly symbolic in nature and yet were received with great enthusiasm by the local Kashmiri population, who had been cut off from relatives on the other side of the LoC for several decades. This was also seen as a shot in the arm for bilateral relations. In 2006, for instance, Pranab Mukherjee, the Indian foreign minister, said on the floor of the Indian parliament that “the expansion of people-to-people contacts, including through trade and commerce will provide an effective platform to develop and strengthen bilateral relations.”⁶⁸ The cross-LoC trade also had a positive impact, albeit limited, on CVFs along the LoC and led to demands from other regions in the state to open trading points there as well.⁶⁹

However, in mid-April 2019, more than a decade after cross-LoC trade and travel began but just a few months before the Indian government made its momentous political decision on Kashmir, the government of India suspended the trade between the two sides, citing reports that “cross LoC trade routes are being misused by the Pakistan-based elements for funneling illegal weapons, narcotics, and fake currency, etc.”⁷⁰ With this, the most important confidence-building measure between the two sides was put on indefinite hold. Cross-LoC linkages, including cross-LoC trade, were an integral part of the four-point formula, and their elimination means that any future talks based on that formula will be harder to begin.

The fourth element of the Kashmir formula is the creation of mechanisms managed jointly by the two sides to oversee certain less sensitive sectors, such as the environment, on both sides of divided Kashmir. Like progress toward the goal of making borders irrelevant, movement toward this objective is also possible if there is political will on both sides.⁷¹ Setting up joint institutions would first require the formation of working groups between India, Pakistan, and the two Kashmirs to manage common interests and tackle common issues such as trade, tourism, and river waters. The third and fourth points of the formula are interrelated; progress toward one would facilitate progress toward the other.

With two of the four points (granting self-governance and making borders irrelevant) now harder to achieve than they were before August 2019, the four-point Kashmir formula is thus far from an ideal basis for future talks on resolving the Kashmir conflict. But it is, nonetheless, perhaps the *best available* basis. Demilitarization and the creation of joint institutions are certainly possible, if the political will exists on both sides, and cross-LoC trade and travel could not only be restored but also complemented with other confidence-building measures. Self-governance would likely be the most challenging issue for negotiators, but perhaps if and when talks take place, the political calculus and mood in New Delhi and Islamabad will have changed—and there is almost certain still to be wide support for self-governance among Kashmiris themselves.

The four-point formula might thus still be a workable basis for negotiations between India and Pakistan that lead to an enduring settlement of the Kashmir conflict. But how could the two sides be persuaded to overcome their current vocal opposition to engaging in a bilateral conversation, especially a conversation whose starting point is Kashmir?

One potential way forward could be to embark upon a step-by-step process. The first step could be to institute a backchannel conversation mandated to discuss issues relating to conflict *management* mechanisms, rather than conflict *resolution*, between the two sides. The backchannel could discuss subjects such as putting in place a written cease-fire agreement to stabilize the LoC and establish regular face-to-face meetings between the directors general of military operations of the two armed forces. Once such a discussion starts, it might well generate some bilateral goodwill, which the two adversaries could build on to negotiate a resumption of the cross-LoC trade that was suspended in 2019 and a reinstatement of other Kashmir-specific confidence-building measures, such as cross-border bus services. If the two sides were able to negotiate and implement those measures, they could then consider appointing special envoys, as was done during the Manmohan-Musharraf period, to discuss a potential way forward to resolve the Kashmir conflict.

Such a step-by-step process toward bilateral engagement on Kashmir can happen only if the two sides believe that it will serve their interests and that the other side will approach negotiations in a constructive spirit. The lack of engagement at the moment makes it difficult to gauge interest on either side.

As things stand today, India and Pakistan are following radically divergent strategies in Kashmir that are unlikely to bring them to the negotiating table any time soon. Whether their strategies and direction change may depend above all on internal political dynamics within Kashmir itself. New Delhi's ability to pacify the security situation and to create and manage new political narratives in the valley are key to stabilizing the situation there. But New Delhi's ability to do that depends not only on its own political willingness but also on Pakistan's political and military designs in Kashmir. Paradoxically, India's determination to dictate what happens in Kashmir and Pakistan's determination to frustrate that ambition may, sooner or later, force them to recognize that they must work together to bring peace and stability to Kashmir.

Notes

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